

Exhibit DD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARIANNE ANNISZKIEWICZ,
Plaintiff,
Index No. 20-cv-6629 (FPG) (MWP)
v.
THE CITY OF ROCHESTER, a municipal entity, POLICE
OFFICER BRIAN CALA, SERGEANT JENNIFER TRENTON,
Defendants.

Deposition Upon Oral Examination of:

Michael Francis Scherbyn

Location: City of Rochester Law Department
City Hall, Room 400A
30 Church Street
Rochester, New York 14614

Date: February 2, 2024

Time: 9:30 a.m.

Reported By: CHRISTINE VIGNA

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A P P E A R A N C E S

Appearing on Behalf of Plaintiff:

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10 | Appear on Behalf of Defendants:

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* * *

1 MICHAEL FRANCIS SCHERBYN - BY MS. JONES
2 of trial or any hearing in this cause, a
3 certified transcript of the deposition may
4 be used as though it were the original;

5 IT IS FURTHER STIPULATED, that the
6 attorneys for the parties are individually
7 responsible for their certified transcript
8 charge, including any expedite or other
9 related production charges;

10 AND IT IS FURTHER STIPULATED, that
11 the Notary Public, CHRISTINE VIGNA, may
12 administer the oath to the witness.

13 * * *

14 MICHAEL FRANCIS SCHERBYN,
15 called herein as a witness, first being
16 sworn, testified as follows:

17 EXAMINATION BY MS. JONES:

18 Q. So before we go any further, you have
19 the right to what's called read and sign your
20 transcript. She's writing down everything that
21 anyone says, my questions and your answers. So you
22 have the opportunity to, once the transcript is
23 finished, get a copy, read over it and make sure
24 that everything is accurate, everything was recorded
25 or written down correctly. So we need to know if



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1 MICHAEL FRANCIS SCHERBYN - BY MS. JONES
2 the loose dog?

3 A. I'm sorry. One more time.

4 Q. Did you know on the day of the
5 incident that the neighbor had been connected with
6 the loose dog?

7 A. Yeah. She was chasing it around.

8 Q. Did you see the neighbor chasing the
9 loose dog?

10 A. Yeah.

11 Q. Did Marianne interact with the
12 neighbor who was chasing the loose dog?

13 A. Yeah. She was actually -- she
14 was -- Marianne was the one that called.

15 Q. So what do you remember about
16 Marianne and her neighbor and the loose dog on the
17 day of the incident?

18 A. Well, there was a lady that lived
19 next door and she was actually -- I don't know what
20 she was doing. She was trying to hit the dog or
21 something. But she kept driving forward, reversing
22 and they felt like that was a threatening thing. So
23 that's -- I think that's when they called the
24 police.

25 Q. So you saw the neighbor driving and



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1 MICHAEL FRANCIS SCHERBYN - BY MS. JONES

2 Q. -- that day?

3 A. Only by sight. I apologize. I
4 didn't mean to cut you off.

5 Q. No. That's fine.

6 How did you feel when you saw the
7 neighbor trying to run the dog over with the car?

8 A. She's crazy.

9 Q. So besides the neighbor, do you
10 remember anyone else being in Marianne's driveway
11 before you heard the gunshots?

12 A. No.

13 Q. Did you have a line of sight from
14 where you were working on the pool in the backyard
15 to where you found the dog after it was shot?

16 MR. SHIELDS: Objection.

17 A. Can you repeat that? I'm sorry.

18 Q. Sure.

19 So did you have a line of sight from
20 where you were working in the backyard setting up
21 the pool to where the dog was shot in Marianne's
22 yard?

23 A. No.

24 Q. So you described the area as being in
25 the back?

1 MICHAEL FRANCIS SCHERBYN - BY MS. JONES

2 Q. Skimmed along their bodies with your
3 hands?

4 A. Yes.

5 Q. Both of the dogs or just one?

6 A. Both of them as they come running
7 past me.

8 Q. And then after that, you continued to
9 the front?

10 A. Yes.

11 Q. Oh. Did you find any blood on either
12 of the dogs as you skimmed them with your hands?

13 A. No.

14 Q. Why did you check or look for
15 injuries on the dogs?

16 A. Because of the gunshot.

17 Q. After you asked the police officer
18 why he shot the dog, what happened?

19 A. He started calling other people.

20 Kalila was out -- outside of the gate. And she was
21 telling the officer that he was in the wrong spot.

22 Q. Did the officer respond to your
23 question at all?

24 A. No. Not really.

25 Q. Why do you say not really?



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1 MICHAEL FRANCIS SCHERBYN - BY MS. JONES

2 A. He was more worried about the dog.

3 Q. And why do you believe he was more
4 worried about the dog?

5 A. Because he shot the first one
6 and -- and we were just trying to get the other two
7 in the house.

8 Q. So you understood that he was more
9 worried about the other dogs?

10 A. Yes.

11 Q. Okay. What else did the officer
12 communicate or indicate to you once you were at the
13 front?

14 A. I was just more in shock than
15 anything. I mean, I couldn't...

16 Q. So in the statement that you signed,
17 you indicated that the officer said there was a
18 call?

19 A. No. Like I say, we never -- well,
20 yeah. I'm sorry. He did say that they were there
21 for a call of a loose dog and neighbor.

22 Q. Did you ask the officer anything
23 else?

24 A. I just -- I just wanted to know why
25 he shot it.



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1 MICHAEL FRANCIS SCHERBYN - BY MS. JONES

2 Q. Did he explain why he shot the dog?

3 A. He said it was coming after him. I'm
4 like it doesn't have any teeth.

5 Q. You told the officer that the dog
6 didn't have any teeth?

7 A. (The witness indicated nonverbally.)

8 Q. Did you say anything else?

9 A. Yes. I'm sorry.

10 Q. Thank you. You nodded. So we're
11 interpreting that as yes.

12 Did you tell the officer anything
13 else besides the dog didn't have any teeth?

14 A. No.

15 Q. Did you recognize the dog that the
16 officer shot?

17 A. Oh, yes.

18 Q. Okay. Whose dog was it?

19 A. Whose dog was it?

20 Q. Yes.

21 A. It was Marianne's.

22 Q. So did you see the officer shoot the
23 dog?

24 A. No.

25 Q. Why did you conclude that the officer



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1 MICHAEL FRANCIS SCHERBYN - BY MS. JONES
2 trying to get the other two dogs into the house?

3 A. Well, Kalila took care of that.

4 Q. And then what happened after that?

5 A. Then a lot of -- how do I put it?

6 Like bosses, I guess, they need to -- they need to
7 when something happens like that. And there was a
8 couple -- I don't know -- three, maybe four
9 Rochester Police that showed up.

10 Q. Did you have an opportunity to
11 prevent the dog from being shot?

12 A. No.

13 Q. Did you tell anyone that you tried to
14 prevent the dog from being shot?

15 A. No.

16 Q. Do you know why Marianne thought that
17 you had tried to prevent the dog from being shot?

18 A. It was all just a chaotic mess after
19 that happened.

20 Q. What do you mean by that?

21 A. Just nobody could believe it happened
22 and it was just chaotic. You know, like I said, she
23 was in the house. And then Kalila had corralled the
24 two other dogs, got them in the house. And that's
25 when Kalila told Marianne that the dog was shot.



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